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C O N F I D E N T I A L ZAGREB 001925

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TAGS: [PREL](#) [PBTS](#) [PHSA](#) [EWWT](#) [EFIS](#) [SENV](#) [SI](#) [HR](#) [EUN](#)

SUBJECT: INTENT TO DECLARE EEZ ADDS NEW WRINKLES TO OLD DISPUTE

REF: A. LJUBLJANA 862

[B](#). ZAGREB 1903 (NOTAL)

Classified By: Isabella Detwiler, Economic officer, reasons 1.5 (b and d)

Summary

1. (C) On September 3, the Slovenian Charge called upon the DCM to deliver a fairly low-key pitch that the U.S. and EU help "create the atmosphere" for a resolution over the conflict over the Croatian intention to announce an exclusive economic zone (EEZ) in the Adriatic. In a presentation that seemed to mix personal opinion with instructions from Ljubljana, he downplayed Slovenian economic interests, instead emphasizing Slovene concerns over access to open seas and a belief that Croatia intended to use the EEZ declaration as an attempt to strengthen its hand in the still-unresolved negotiation of a sea and land border agreement.

2. (C) In a separate meeting with the Croatian MFA, the head of the Legal Department assured us that an EEZ would not cause problems in navigation (including for warships), and would not affect existing Slovene-Croatian fishing agreements. Our interlocutor said discussions were ongoing, and that no definite decision had been made to declare an EEZ as opposed to an ecological and/or environmental zone. End Summary

EEZ and Border Agreement -- Separate but Linked

3. (C) On September 4, Slovenian Charge Hocevar called on the DCM. He noted that the Slovenian non-paper on the EEZ issue, presented to an embassy colleague the day before (faxed to EUR/SCE, L and OES), was "already" old, and that the Slovenian arguments were evolving, especially as it prepared for an October 22-24 meeting in Brussels and a EU fisheries meeting in Venice, set for November. He emphasized that while the EEZ and the border agreement were legally separate, the main Croatian motivation in declaring the EEZ was to put Croatia in a stronger position in the border negotiation (an earlier settlement, which covered both maritime boundaries and some small adjustments to the land border, was initialed by the GOC and GOS, but repudiated by the GOC after meeting fierce opposition in Croatia). Hocevar speculated that Croatia may also wish to cement rights over gas deposits.

4. (C) While conceding that the repudiated agreement was not legally binding, Hocevar was confident it would form the "basis" of an arbitrated agreement. When asked if the GOS was willing to accept arbitration, he noted that the GOS was concerned about the possible partiality of a judge on the International Maritime Court in Hamburg, so had rejected that venue. The International Court of Justice in the Hague was a possibility, but the GOS had not made a final decision.

Electioneering

5. (C) Hocevar was pointed in ascribing current Croatian policy statements to electioneering. He believed that Deputy Foreign Minister Simonovic was the architect of this anti-Slovenian campaign waged in the press without consultations with Ljubljana. Hocevar also commented that the Slovenian side should lower its rhetoric, and not allow itself to be baited by the Croats.

"Basic Right of Access"

6. (C) Hocevar downplayed Slovenian economic interest in fisheries, guessing that there were only about 50 Slovenian fishermen. However, history, the coastal way of life and "tradition" gave the sector more weight than the employment numbers would indicate. The main reason for Slovenia's concern was a fear of being cut off from the open sea. When the DCM noted that the Convention on the Law of the Sea guarantees the right of innocent passage, Hocevar replied that in cases of "national emergencies," EEZs could be closed

off, creating crises -- e.g., Panama under Noriega or a Greek-Turkish conflict that almost led to war. Hovevar argued it was in the interest of all countries, including the U.S., to preserve as open access as possible to the high

seas, and that it was the "basic right" of Slovenia to have access to the sea. Slovenia would seek a joint-ecological zone. "Hopefully, Croatia will see the importance of EU and NATO in today's world," Hovevar concluded.

#### A Concession Too Far

17. (C) Previously, we met with the head of the MFA's international legal department, Andreja Metelko-Zgombic. She confirmed many of the points made the day earlier by the Deputy Minister to the diplomatic corps (ref B). Discussing the repudiated border agreement, which the Slovenians believe enhances their rights to "territorial access" to the open sea (as opposed to merely effective access through transit rights), Zgombic said the agreement had been opposed even before its initialing by most Croatian legal experts, but had been a good-faith effort to promote good neighborly relations. It ultimately proved to be too generous to gain the constitutionally required parliamentary ratification. The agreement, which included both sea borders and minor land border adjustments, would have ceded Croatian territorial waters to create an open sea corridor from internationally recognized open seas to Slovenian territorial waters. In doing so, it would have cut off a triangle of Croatian territorial waters from the rest of Croatian jurisdiction. The Croatians had also negotiated some concessions on the land border within the same agreement, which were also not now operable. Zgombic reiterated previous Croatian assertions that the GOC was ready to seek arbitration in any relevant court, including the ICJ.

18. (C) When asked to comment on Slovenian press suggestions for a Monaco-like solution (France ceded some territorial waters to Monaco to ensure Monaco's access to open sea), Zgombic noted that France "gave" this away -- it was not a right of Monaco -- and a similar approach had already been tried in the form of the rejected agreement and found politically infeasible.

#### If Navigation, Fishing and Gas Not Issues ...

19. (C) On practical issues, Zgombic said that existing fisheries treaties with Slovenia, which extend fishing rights in territorial waters, would continue in force (the EEZ would have no impact on territorial waters). Croatia was prepared to negotiate special fishing rights in the EEZ for Slovenia as a Geographically Disadvantaged Country as provided for under Article 70 of the Convention on the Law of the Sea. The right of innocent passage without prior notification through the EEZ, including for military ships, was not in doubt. The memorandum recently signed by Croatia, Italy and Slovenia, which created counter-clockwise commercial traffic lanes in the Adriatic, would remain in force. Finally, Zgombic looked surprised when asked if an EEZ would have any impact on exploitation rights of the seabed in the Adriatic. She noted that it is clear in law that an EEZ has no impact on the rights related to the underlying seabed, which are determined by agreements on the continental shelf, which is not in dispute. (Note: at least so far.)

110. (C) Zgombic claimed that no firm decisions had been made on the declaration of an EEZ. The options of declaring an ecological zone or a fisheries zone were still in play. She saw little difference between a combined fisheries/ecological zone, and an EEZ. (Note: the previous day, the Deputy Minister had told the diplomatic corps that the GOC preference was for an EEZ because of its more solid legal base.)

#### ... Then Why the Decision?

111. (C) When asked why the government had decided to make this declaration of intent now, after having mulled over the issue publicly so long, Zgombic ventured that the EU policy of encouraging fishery or ecological zones had been an important factor, as well as evident degradation of the environment and decline in fish stocks. Earlier, Croatia had been constrained by political considerations, including a perception that Italy would object to losing automatic access to nearby open sea. (Comment: It is very likely Croatia would negotiate special fishing rights for Italy when delimiting the overlapping Croatian and Italian EEZ claims. It is also likely that Croatian elections, slated for

November, factored in the decision; being tough on the Slovenians is always a political winner. End Comment.)

Comment

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12. (C) While confident of its right to declare an EEZ, the GOC is aware of its obligation to consult -- but it does not believe that consultations need to be concluded to Slovenian satisfaction before it can act. Nevertheless, the government has said it will not declare an EEZ precipitously. It has (belatedly) sought consultations, and publicly called for the return of the Slovene ambassador, recalled by Ljubljana earlier this week. While the GOC has mustered its legal arguments, it is unclear whether the GOC has considered all the political consequences -- especially if the GOS puts teeth in its alleged intimations that its support for Croatia's EU membership is at risk. We concur with Embassy Ljubljana's recommendation that Croatia and Slovenia be encouraged to work this out bilaterally, or in an EU context.  
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